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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/624,532

07/23/2003

Woo-Young Jang

249/394

6657

27849 7590 03/14/2008

LEE & MORSE, P.C.
3141 FAIRVIEW PARK DRIVE
SUITE 500
FALLS CHURCH, VA 22042

EXAMINER

APANIUS, MICHAEL

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

03/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. The amendments to claims 1, 28 and 36, the cancellation of claims 2 and 11, the amendments to the specification and the replacement drawing sheet showing figure 7 are acknowledged.

Election/Restrictions

2. Claims 1, 3-6, 8, 10, 17, 19, 24, 28, 29, 31-34, 36, 38-40, 45 and 53-68 are now allowable. Claims 7, 9, 30, 35, 37 and 50, previously withdrawn from consideration as a result of a restriction requirement, require all of the limitations of an allowable claim.

Pursuant to the procedures set forth in MPEP § 821.04(a), **the restriction requirement between species I-IV, as set forth in the Office action mailed on 8/29/2005, is hereby withdrawn** and claims 7, 9, 30, 35, 37 and 50 are hereby rejoined and fully examined for patentability under 37 CFR 1.104. In view of the withdrawal of the restriction requirement, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Drawings

3. The amendment filed 10/30/2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows.

4. Figure 7 shows particular electrodes that do not appear to be properly supported for use with the perpendicular adjusters. The perpendicular adjusters may be used with the electrode configuration shown in figures 2A-2D, but figure 7 shows the electrodes similar as to how they appear in figure 4A. In addition, the details of the figure do not appear to be properly supported. For example, figure 7 shows that the screw lines cross one another near the middle of each axis. The original disclosure does not appear to properly support this feature shown in figure 7. Many arrangements are possible and it is unclear why the particular arrangement shown in figure 7 is properly supported by the original disclosure. Since the perpendicular adjusters were only broadly described in the original disclosure, the new drawing shows details of the perpendicular adjusters that are not properly supported the original disclosure.

5. Applicant is required to cancel the new matter in the reply to this Office Action. However, the drawings must show every feature of the invention specified in the claims.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 30 and 50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The perpendicular adjusters are not used with all of the claimed electrode embodiments (see paragraph 45 of the specification). The electrodes of claims 30 and 50 were not originally disclosed for use with the perpendicular adjusters set forth in claim 28. Therefore, the combination of the perpendicular adjusters set forth in claim 28 with the electrode configurations of claims 30 and 50 does not appear to be properly supported by the original disclosure. It appears that claims 30 and 50 should be cancelled.

Response to Arguments

8. Applicant's arguments asserting that the figure 7 does not introduce new matter in the disclosure have been fully considered but they are not persuasive.

9. In particular, Applicant argues that the electrodes shown in figure 7 are clearly supported by original figure 4A which shows the same electrodes. In response, it is noted that the perpendicular adjusters are disclosed for use with the electrodes in figures 2A-2D or electrodes having an oval structure (paragraph 45). The electrodes shown in figures 2A-2D (and the oval electrodes) are clearly different from the electrodes shown in figure 4A. The original disclosure does not provide support for the

perpendicular adjusters in figure 7 in combination with the electrodes shown in figure 4A. Furthermore, merely because the original disclosure does not state that the electrodes shown in figure 3A-3D and 4A-4B cannot be used with the perpendicular adjusters does not properly provide support for the particular electrodes in combination with perpendicular adjusters as shown in new figure 7.

10. Applicant states that figure 7 shows two distance adjusters, each adjuster having a screw line, wherein the screw lines are separated from one another by a predetermined distance and are arranged perpendicular and asserts that these features are clearly supported by the original disclosure. In response, figure 7 shows details of the arrangement that are not particularly supported by the original disclosure. For example, figure 7 shows the adjusters overlapping near the center of each adjuster. It is unclear where this feature is supported by the original disclosure.

Conclusion

11. Since Applicant's amendments placed claims 1, 3-6, 8, 10, 17, 19, 24, 28, 29, 31-34, 36, 38-40, 45 and 53-68 in condition for allowance, causing the rejoinder and consideration of claims 7, 9, 30, 35, 37 and 50, Applicant's amendment necessitated the new ground(s) of rejection of claims 30 and 50 presented in this Office action.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Apanius whose telephone number is (571)272-5537. The examiner can normally be reached on Mon-Fri 9am-5:30pm.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MA

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736